



COMPETITION COMMISSION OF INDIA

Case No. 11 of 2018

In Re:

**Parsoli Motor Works Pvt. Ltd.
Signature -1 Building
Near Makarba Circle
S G Road
Ahmedabad
Gujarat – 380051**

Informant

And

- 1. BMW India Private Limited
Tower B, 7th Floor, Building No.8
DLF Cyber City, Phase II
Gurugram
Haryana**

Opposite Party No. 1

- 2. BMW India Financial Services Private Limited
Tower C, 14th Floor, Building No. 10
DLF Cyber City, Phase-II
Gurugram
Haryana**

Opposite Party No. 2

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. Sudhir Mital
Member**

**Mr. U.C. Nahta
Member**

**Mr. Justice G. P. Mittal
Member**



Order under Section 26(2) of the Competition Act, 2002

1. The present information has been filed under Section 19(1)(a) of the Competition Act, 2002 ('the Act') by Parsoli Motor Works Pvt. Ltd. ('the Informant') against BMW India Private Limited ('OP-1') and BMW India Financial Services Private Limited ('OP-2') (collectively, 'OPs') alleging abuse of dominant position in contravention of the provisions of the Act.
2. The Informant is a private limited company incorporated under the provisions of the erstwhile Companies Act, 1956 and was a dealer for selling BMW cars in the State of Gujarat since 2007 till 31.12.2017.
3. OP-1 is the manufacturer and seller of BMW cars in India and sells the same through dealers such as the Informant. OP-2 is the entity which financially supports the sales of OP-1 and is stated to be a group company of OP-1.
4. It is averred in the information that the OPs have abused their dominant position. In order to make profits, OP-1, through its dealers based in the States outside Gujarat, sells BMW cars to customers based in Gujarat, and in the process, violates not only its own policy/terms and conditions, but also cheats the State exchequer. It is stated that the action of OP-1 in allowing dealers outside Gujarat to sell BMW vehicles to customers based in Gujarat is an abuse of the dominant position resulting in financial losses to the Informant.
5. It is further averred that the tax regime in India is such that in the event value-added taxes are paid in a particular State, and certain goods move from that State to another State, then entry tax is required to be paid at the time such goods enter the limits of another State. For instance, in the event



VAT is paid on BMW cars in Maharashtra, then at the time of bringing such cars in the State of Gujarat, entry tax is required to be paid on such cars. It is alleged that BMW India seems to have a fraudulent/illegal arrangement, because such entry tax is not being paid in the State of Gujarat by any of the customers based in Gujarat who purchase BMW cars from outside Gujarat.

6. It is further stated that BMW India, after having made the Informant invest approximately Rs. 30 crore which can be used only for the specific purpose of sale of BMW vehicles and for no other purpose, sent a letter dated 07.12.2017 to the Informant giving a 3 weeks' notice stating that it would not renew its dealership agreement which was to expire on 31.12.2017, though it was agreed that the dealership would continue for a long period and renewed each year, and in the event one were to exit the contract without any cause, then a reasonable period of 6 – 8 months would be given to the other party to make alternate arrangements to safely exit the business. This, it has been alleged, is a case of abuse of dominant position on the part of BMW India when it decided not to renew the dealership agreement giving only 21 days' notice, though it had been renewing the dealership agreement for the last 9 years. Also, BMW India did not give the Informant 6-8 months' time as agreed to exit the business so that the Informant does not suffer losses.
7. Based on the above averments and allegations, the present information has been filed by the Informant against the Opposite Parties alleging contravention of the provisions of Section 4 of the Act and investigation by the Director General is sought in the matter.
8. The Commission has considered the information and the documents filed therewith.



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9. At the outset, it is observed that Section 4 of the Act proscribes abuse of dominant position by an enterprise. It defines ‘dominant position’ as a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces prevailing in the relevant market; or affects its competitors or consumers or the relevant market in its favour. In the present case, from the information available in the public domain, it appears that BMW India has negligible share in the passenger car segment in India which is dominated by a number of players. As a result, in the dealership network also, BMW India would not have spread much as compared to that of Maruti, Hyundai, Tata *etc.*, who command a significant market share. In such a market construct, BMW India cannot be said to be a dominant player and as such the question of abuse of dominant position will not arise. The Commission also notes that the Informant has not provided any document or data wherefrom the dominance of the OPs can even be *prima facie* established in any relevant market. Even otherwise, as discussed below, the instant information does not disclose any infringement of the provisions of the Act.
10. The Commission notes that the Informant was a dealer for BMW vehicles for the territory of the State of Gujarat under a dealership agreement with OP-1 since 2007 which was being renewed from time to time. However, *vide* letter dated 07.12.2017, BMW India intimated the Informant for not renewing the existing dealership agreement which was to expire on 31.12.2017. Feeling aggrieved by the decision of BMW in not renewing the agreement, the Informant has filed the instant information alleging abuse of dominance by the OPs. The Informant is also aggrieved of the fact that BMW India has not given sufficient time to the Informant to exit from the business.
11. The Informant has also alleged that contrary to its own policy, BMW India is allowing dealers based outside the State of Gujarat to sell BMW cars to customers based in the State of Gujarat. Such acts on the part of OP-1 have



caused financial losses to the Informant besides defrauding the State exchequer by not paying entry tax on such sales.

12. On perusal of the information and the documents filed therewith, the Commission observes that the existing dealership agreement between the Informant and OP-1 was renewed for a period of one year commencing from 01.01.2017 and was to expire on 31.12.2017. As such, the Informant was fully cognizant of the fact that the existing agreement would expire on 31.12.2017. In these circumstances, the Commission does not find any reason whereby the letter dated 07.12.2017 of BMW intimating the Informant about not renewing the agreement beyond 31.12.2017, can be faulted, as the existing dealership agreement between the Informant and OP-1 stood expired by efflux of time on 31.12.2017 due to non-renewal thereof. The Informant has not challenged any term of the now expired dealership agreement.
13. The Informant has also made allegations in the information about evasion of entry tax by BMW in respect of the vehicles which were allowed to be sold to the customers of the State of Gujarat from its dealers based outside the State of Gujarat. The Commission is of opinion that such issue does not raise any competition concern.
14. In view of the foregoing, the Commission is of the opinion that no case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties and the information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



15. The Secretary is directed to communicate to the Informant, accordingly.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(U.C. Nahta)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

New Delhi
Date: 30/05/2018